

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

EVERETT HAGER,

Movant,

v.

CIVIL ACTION NO. 2:02-1353

CRIMINAL ACTION NO. 2:00-00006-01

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Petitioners Everett Hager and Bobby Hager filed a Motion to Reconsider the Judgment and for Extraordinary Relief, asking the Court to set aside its June 25, 2003, Order dismissing the Section 2255 petition of Everett Hager. By that Order, this Court adopted the proposed findings of the Magistrate Judge and dismissed the petition, noting that Hager did not file an objection to the findings. In this Motion Hager contends that he was denied an opportunity to file objections because the prison in which he was held was under a lockdown from May 10, 2003, until June 18, 2003, and that he was deprived of his legal documents until December, 2003. He then contends that he mistakenly sent this Motion to Reconsider to the Fourth Circuit Court of Appeals which refused to forward it to the district court.

The Court **DENIES** the Motion. Assuming for the sake of argument that Everett Hager was prevented from filing a response or objection while he was in lockdown and that he was denied his legal documents, Hager fails to explain what prevented him from seeking relief within a reasonable time after the return of his legal documents in December, 2003. Under Rule 60(b) of

the Federal Rules of Civil Procedure, a party must seek relief within one year of judgment for grounds relating to excusable neglect or misconduct by an adverse party. A motion on any other grounds must be made within a reasonable time. Under either standard, his Motion is not timely. To the extent Bobby Hager joined in the Motion, he has no standing

The Clerk is directed to forward a copy of this written opinion and order to counsel of record and any unrepresented parties.

ENTER: May 9, 2005

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE